IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION NO.2 OF 2006
IN
COMPANY PETITION NO.445 OF 2001

M/s.Apte Amalgamation Ltd. Applicant

versus

The Maharashtra State Co-op.
Growers Marketing Fed. Ltd. Respondent

Omkar Wavvauge i/by Shaunak Satpute & Co. for petitioner.

Ms.Rajini Upadhyay i/by Pandya Gandhi & Co. for respondent.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 10th March 2006

PC :

1. Heard learned counsel appearing for applicant-original respondent and original petitioner.

2. The original petitioner has instituted Company Petition No.445 of 2001 in this Court for winding up of the applicant herein.

3. It is not disputed by both sides that the

applicant company was before BIFR as applicant in Reference which was filed as far back as on 18th April 2002. The reference came to be rejected by an order on 12th July 2005.

4. The order of BIFR was challenged in appeal under section 25 of Sick Industrial Companies (Special Provisions) Act, 1985 ("SICA" for short). There is a specific statement on oath made in this company application that papers and proceedings in the said appeal were served on the original petitioner herein. The communication with details of it’s date of dispatch and receipt is referred to and a copy thereof is annexed to this application. The company petition was placed before this Court on 24th November 2005 when although none appeared for the applicants herein, attention of this Court was not invited by the original petitioner to the pendency of an appeal and to the provisions contained in Section 25 of the SICA.. Consequently, an ex-parte order came to be passed winding up the applicant company.

5. In fact the original petitioner does not dispute filing of an appeal by the applicant herein and that it is pending before the

appellate authority namely AAIFR.. In the light of this, the bar contained in Section 22(1) of the above enactment would apply and consequently the order of winding up will have to be stayed.

6. In my view, in the light of the above factual and legal position, the order of winding up could not have been passed by this Court on 24th November 2005. The order, therefore, deserves to be recalled and set aside. It is accordingly set aside.

7. Company Petition No.445 of 2001 is restored to the file of this Court. However, in the light of the above position in law namely stay of proceedings by virtue of Section 22(1), hearing of company petition is adjourned sine die. Liberty is reserved to the original petitioner to move this company petition after giving 72 hours advance notice to the applicant herein, in the event appeal is disposed of. Application allowed in the above terms. No order as to costs.

(S.C.DHARMADHIKARI, J.)